

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 1-09-50026-REG

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In the Matter of:

MOTORS LIQUIDATION COMPANY, et al.

f/k/a GENERAL MOTORS CORPORATION, et al.

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

March 2, 2010

11:04 AM

B E F O R E:

HON. ROBERT E. GERBER

U.S. BANKRUPTCY JUDGE

HEARING re Debtors' Third Omnibus Objection to Claims
(Duplicate Claims)

HEARING re Debtors' Motion for Entry of Order Pursuant to 11
U.S.C. §§ 105(a) and 363 in Aid of Implementation of Sale

HEARING re Motion of Sarajuan Gilvary for Relief from the
Automatic Stay to Continue a Separate Litigation

HEARING re Motion of Marla Soffer, Administratrix of the Estate
of David Arenas, Deceased, for Relief from the Automatic Stay
to Continue a Separate Litigation

HEARING re Status Conference regarding Motion of ACE American
Insurance Company and Affiliated Companies to Compel Debtors to
Assume or Reject Insurance Policies and Related Agreements

HEARING re Debtors' Objection to Proofs of Claim Nos. 02109 and
14938 Filed by Lafonza Earl Washington

HEARING re Debtors' Objection to Proof of Claim No. 903 filed
by Susan B. Angell and Prudence Reid

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HEARING re Debtors Eleventh Omnibus Motion Pursuant to 11
U.S.C. § 365 to Reject Certain Executory Contracts

Transcribed by: Lisa Bar-Leib

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A P P E A R A N C E S :

WEIL GOTSHAL & MANGES LLP

Attorneys for Debtor

767 Fifth Avenue

New York, NY 10153

BY: JOSEPH H. SMOLINSKY, ESQ.

HONIGMAN MILLER SCHWARTZ & COHN, LLP

Attorneys for Debtor

2290 First National Building

660 Woodward Avenue

Detroit, MI 48226

BY: SETH A. DRUCKER, ESQ. (TELEPHONICALLY)

UNITED STATES DEPARTMENT OF JUSTICE

U.S. Attorneys Office

86 Chambers Street

Third Floor

New York, NY 10007

BY: DAVID S. JONES, AUSA

MARSHALL, DENNEHEY, WARNER, COLEMAN & GOGGIN

Attorneys for M&M Motors

200 Lake Drive East

Suite 300

Cherry Hill, NJ 08002

BY: WALTER E. KAWALEC, III, ESQ.

KENNEDY, CAMPBELL, LIPSKI & DOCHNEY

Attorneys for Pompey Dodge Dealership

1818 Market Street

Suite 2510

Philadelphia, PA 19103

BY: NANCY E. CAMPBELL, ESQ.

THE ZAJAC LAW FIRM, LLC

Attorneys for Movants, Sarajuan Gilvary and Marla Soffer

1818 Market Street

30th Floor

Philadelphia, PA 19103

BY: ERIC G. ZAJAC, ESQ.

1
2 KRAMER LEVIN NAFTALIS & FRANKEL LLP

3 Attorneys for Official Committee of Unsecured Creditors

4 1177 Avenue of the Americas

5 New York, NY 10036

6
7 BY: LAUREN M MACKSOUD, ESQ.

8
9 NEW YORK STATE DEPARTMENT OF LAW

10 Attorneys for New York State Department of Conservation

11 120 Broadway

12 New York, NY 10271

13
14 BY: MAUREEN F. LEARY, AAG

15 (TELEPHONICALLY)

16
17 ALSO PRESENT TELEPHONICALLY:

18 DAVID SEMENZA, Cerberus Capital Management

1 P R O C E E D I N G S

2 THE COURT: All right. GM. Mr. Smolinsky, you want
3 to quarterback things and help me get your views and
4 recommendations as to how you would like to proceed?

5 MR. SMOLINSKY: Yes. Thank you, Your Honor. Joe
6 Smolinsky of Weil Gotshal & Manges for the debtors. Before we
7 begin, I'd like to take an opportunity to just introduce
8 Carrienne Basler who's a managing director of AlixPartners who
9 is doing a considerable amount of work on the claims in this
10 case. So you'll be seeing her.

11 THE COURT: Okay. Good morning. Was that Ms. Basler?

12 MS. BASLER: Yes.

13 THE COURT: Thank you. Okay.

14 MR. SMOLINSKY: So you'll be seeing her from time to
15 time going forward. Your Honor, if I could recommend that we
16 just go through the agenda, the amended agenda that we filed
17 with the Court. I think that's usually an effective way.

18 THE COURT: Sure.

19 MR. SMOLINSKY: In the category of contested matters,
20 which is not truly contested, we have an adjourned hearing on
21 the debtors' third omnibus objection to claims. This is just
22 going to be a status conference today. We had three remaining
23 claims that were subject to continued work; the first was
24 Liberty Mutual. They've voluntarily withdrawn their claim so
25 we'll be withdrawing the motion as to them.

1 ILCO Site Remediation, they wanted to withdraw the
2 claim through a separate stipulation so we're going to endeavor
3 to do that and put it on file and then withdraw the motion as
4 to them.

5 That leaves Sharyl Carter. I, just yesterday,
6 received a lengthy letter from Ms. Carter so we're going to
7 continue to see where that goes and we'll adjourn the motion as
8 to that claim and figure out whether we need to come back for
9 some court time.

10 THE COURT: All right. Fair enough.

11 MR. SMOLINSKY: Your Honor, the second matter on the
12 calendar is the debtors' motion for entry of an order in aid of
13 implementation of the sale. As Your Honor is aware, the master
14 asset purchase agreement that was entered into, to sell
15 substantially all of the assets of Motors Liquidation Company,
16 was done fairly quickly. There was a lot of discussion, a lot
17 of negotiation. At the end of the day --

18 THE COURT: Could you pause for just a second, Mr.
19 Smolinsky?

20 MR. SMOLINSKY: Yes.

21 THE COURT: Ms. Leary, are you on the phone?

22 MS. LEARY (TELEPHONICALLY): I am, Your Honor.

23 THE COURT: Okay. You have an interest in this matter
24 as well, right?

25 MS. LEARY: Yes, a limited one. And we're trying to

1 work on it. There are a couple of glitches and we're trying to
2 work that out. But I'm here.

3 THE COURT: All right. Back to you, Mr. Smolinsky.
4 Ms. Leary, if you have a need or desire to be heard after Mr.
5 Smolinsky's done, I'll let you.

6 MS. LEARY: Thank you very much.

7 THE COURT: Okay.

8 MR. SMOLINSKY: Your Honor, let me also add just for
9 the record that we received two other letters late yesterday;
10 one from the Mohawk tribe and the other from a group of states,
11 including Missouri, Massachusetts, Michigan, New Jersey, North
12 Carolina, Ohio and California as a joinder to Ms. Leary's
13 objection.

14 THE COURT: Right.

15 MR. SMOLINSKY: So, Your Honor, we endeavored to work
16 cooperatively with New GM to work out the various issues that
17 arose. Most of the issues relate to what constitutes retained
18 property and what constitutes transferred property. And
19 together with the creditors' committee, who have been actively
20 involved in these discussions and negotiations, we entered into
21 a stipulation which resolves all of the known issues that
22 exist.

23 You will also be seeing another motion shortly, with
24 respect to some further issues that we will bring to the Court
25 because we view it to be material and therefore it should go

1 out to notice to everybody. By material I don't mean hugely
2 material, I mean of a nature that we think, in our own view,
3 should be noticed out.

4 The firestorm that was created by the proposed order
5 related to a provision that we inserted in the order to allow
6 us to resolve these issues from time to time.

7 THE COURT: Without bringing them to me, again.

8 MR. SMOLINSKY: Without court order as long as the
9 creditors' committee, you know, is aware and signs off. We've
10 attempted and we suspect that the state's issue relates to how
11 certain environmental liabilities could be implicated by
12 resolutions that involve real estate. And we proposed language
13 to Ms. Leary, not sure if it was to her satisfaction, but I
14 took the liberty of revising it slightly and in discussions
15 with the United State of America, who appeared this morning, I
16 want to read into the record a proposal for resolution of the
17 objection.

18 THE COURT: Has Ms. Leary, the tribe and Missouri and
19 the other states had a chance to see this language yet?

20 MS. LEARY: No, Your Honor.

21 MR. SMOLINSKY: Ms. Leary saw substantially this
22 language. We've made a few tweaks to deal with her reactions
23 to the language that we circulated I think two days ago. And
24 perhaps I can just read it into the record and see if it
25 resolves her -- it was difficult to understand what Ms. Leary's

1 concern was with respect to the language.

2 THE COURT: I understood what her concern was. She
3 didn't want you doing anything that could gore her ox on the
4 environmental front without giving her a chance for notice and
5 an opportunity to be heard.

6 MR. SMOLINSKY: That's right, Your Honor. The
7 language that we proposed was to give her a period of notice to
8 allow her to object to any settlement and if there was an
9 objection then we would bring it before the Court if we
10 couldn't consensually resolve it. That was the sum and
11 substance of the language that was proposed.

12 THE COURT: Well, you can read it in but, frankly, Mr.
13 Smolinsky, the better course, best practices if you will, would
14 have been to let her see exactly what you were going to be
15 reading to me so that she wouldn't have to react to it on the
16 fly.

17 MR. SMOLINSKY: I understand, Your Honor, and I'm not
18 trying to bulldoze her. To the extent that she needs
19 additional time to look at the language, we can do that after
20 the hearing today.

21 THE COURT: Okay. Why don't you read it in?

22 MR. SMOLINSKY: Okay. The ordering paragraph would
23 read, "Ordered that the debtors are authorized to enter into
24 future settlements with New GM with respect to similar disputes
25 under the MSPA without further court approval provided that the

1 debtors obtain the prior written consent of the creditors'
2 committee and the United States of America.

3 "Provided further, however, that if any future
4 settlement between the debtors and New GM with respect to
5 similar disputes under the MSPA impacts real property located
6 in a particular state or adjacent to any tribal land, the
7 debtors will provide five business days notice of such
8 settlement to any state representative in the impacted state
9 identified on a notice of appearance in these Chapter 11 cases.

10 "(i) If no objection is received during that five
11 business day period the debtors may proceed to enter into such
12 settlement pursuant to the procedures set forth herein.

13 "(ii) If an objection is received during the five
14 business day period, the debtors will seek to resolve such
15 objection consensually or seek court approval of such
16 settlement."

17 It's substantially identical, I think, to the language
18 that was delivered to Ms. Leary and so I don't know if there
19 are any additional concerns that she would have.

20 THE COURT: All right. Mr. Jones, I assume that on
21 behalf of New GM, the U.S. Government, you're cool with this?

22 MR. JONES: Yes, Your Honor. As Mr. Smolinsky just
23 read into the record, the United States has been added on par
24 with the creditors' committee in the proposed order. That was
25 in our request, particularly because the United States interest

1 as a lien holder, among other things, we wanted advanced notice
2 and an opportunity to approve. But we take no position and
3 certainly are not advancing an objection to the order as so
4 modified.

5 THE COURT: Okay. I get the point.

6 MR. JONES: Yes. And as to the states, we're not
7 pushing but we're not opposing either.

8 THE COURT: All right. So, Ms. Leary, let me get your
9 perspective, please.

10 MS. LEARY: Thank you, Your Honor. I think that it
11 would be important for me to see this in black and white. I'm
12 happy that the United States was added. One comment I have is
13 that the debtor continues to retain some level of discretion
14 over which no one really has any control and that is the
15 discretion to determine whether they think this is going to
16 affect us or not.

17 My second observation is whether they think any
18 amendment to the master sale and purchase agreement is going to
19 affect a particular state or party in interest.

20 THE COURT: Pause, please, Ms. Leary. I'm trying to
21 get my arms around your point. Is your point that an amendment
22 might gore your ox but that the debtor might not think that it
23 gores your ox enough to give you notice so you can be heard in
24 the first place?

25 MS. LEARY: That's right. I think the qualifying

1 language that gives them that discretion, I mean why not just
2 give us notice and be done with it, not have to have that kind
3 of misunderstanding later.

4 THE COURT: I see. Mr. Smolinsky, is there an issue
5 about giving Ms. Leary, the tribe and the several objecting
6 states, Missouri and the people who signed on with Missouri,
7 notice of that character?

8 MR. SMOLINSKY: Your Honor, I think if you look at the
9 stipulation and what's being affected here, it's basically
10 surety bonds, insurance policies, things of that nature. I
11 don't have an objection but my concern, when this was raised
12 yesterday, was that if we're going to give all of the states
13 notice we might as well just file another motion.

14 THE COURT: No. I think there's quite a bit of a
15 difference because Ms. Leary, Missouri, the Mohawk tribe,
16 they're going to get me really mad if they object when they
17 don't have any skin in the game.

18 But if I hear Ms. Leary right, she's saying that if
19 you make the decision as to whether her ox is gored, you're the
20 wrong guy to decide that and it ain't a big deal to give her a
21 piece of paper in that five days. You're not talking about a
22 notice, you're just telling her what -- you're going to give
23 her a copy of the stip or whatever the agreement is. I mean,
24 it's a classic example of what notice and a hearing means under
25 363. You don't even have to do a motion but she's saying, in

1 substance, let her know what's going on. Don't do it behind
2 her back.

3 Ms. Leary, am I overstating your position because if
4 you're asking for more than that, it might trouble me. But if
5 that's all that you're asking for, I'm of a mind to ask Mr.
6 Smolinsky whether it's no harm no foul.

7 MS. LEARY: Your Honor, you've articulated well the
8 position that we bring to the Court today.

9 THE COURT: All right. So, Mr. Smolinsky, you don't
10 even have to do a motion. You've just got to let Ms. Leary and
11 the two or three or four other entities that have climbed on
12 with her, you're going to let her know what's going on and the
13 five days is fine. And if she overreaches, she's going to get
14 me mad but she will be entitled to a hearing. And then you may
15 have to tell me more about what you want to do. But it seems
16 to me that as a matter of fair play Ms. Leary, on behalf of New
17 York State, Missouri, the tribe, the couple of entities that
18 signed on with Missouri you don't even have to do it to
19 everybody else, they didn't object, just give them notice.
20 Give them a copy of whatever you propose to do and they got the
21 five days across the board. And then we'll move on.

22 MR. SMOLINSKY: We're happy to do that, Your Honor.
23 We'll revise the order and we'll circulate it.

24 THE COURT: You cool with that, Ms. Leary? I'm not --
25 of course, I'm not playing "Let's Make a Deal" with you but

1 what I am doing is saying do you have any substantive
2 objections that I didn't focus on.

3 MS. LEARY: No, Your Honor. We did ask for seven days
4 but I don't think there's a huge difference between five and
5 seven. I defer to the Court in terms of what you feel that we
6 adequately can address any objections right now.

7 THE COURT: I could swear that Mr. Smolinsky said five
8 business days which is what seven days used to look like. And,
9 frankly, if you got to work a little harder, I think that
10 that's okay.

11 MS. LEARY: Thank you, Your Honor.

12 THE COURT: All right.

13 MR. SMOLINSKY: Thank you, Your Honor.

14 THE COURT: Okay. Your motion is approved with the
15 massaging that we just discussed, Mr. Smolinsky.

16 MR. SMOLINSKY: Your Honor, if I may, in getting ready
17 for the hearing and in further review by the parties with
18 respect to the schedules attached to the stipulation, there
19 were some immaterial clarifying modifications that were made.
20 If I may, I'd like to hand up a blackline of the stipulations.

21 THE COURT: Sure. It's in the schedules but not the
22 stip itself?

23 MR. SMOLINSKY: The only change in the stip is that
24 there was a missing paragraph number which was fixed.

25 THE COURT: Okay.

1 MR. SMOLINSKY: There was a footnote added.

2 THE COURT: Footnote 2?

3 MR. SMOLINSKY: Yes. It was a small performance of
4 bonds that was deleted because the property was not
5 transferred. And then the names of the appeal bond issuers was
6 incorrect in a number of instances. Just the name, not the
7 substance or the account number.

8 THE COURT: Okay.

9 MR. SMOLINSKY: Thank you, Your Honor. We'll
10 circulate the order and submit it to Your Honor. Thank you.

11 THE COURT: Fair enough.

12 MR. SMOLINSKY: Your Honor --

13 MS. LEARY: May I be excused?

14 THE COURT: Yes, you may, Ms. Leary. You can drop
15 off.

16 MS. LEARY: Thank you very much.

17 THE COURT: Okay.

18 MR. SMOLINSKY: Your Honor, the next two matters on
19 the calendar are not the debtors' motions. One is the motion
20 of Sarajuan Gilvary and the other of Marla Soffer. The Gilvary
21 motion for relief from the automatic stay was for permission to
22 sue a nondebtor party. We had agreed to stipulate to that.
23 And then Pompey Dodge, who was the co-defendant, filed an
24 objection. Similarly, with the Soffer motion, we had filed a
25 statement of no position and the dealer co-defendant, M&M

1 Motors, filed in opposition. So I think at this time, I'll
2 cede the podium to the movants on those two motions.

3 THE COURT: Yeah. Am I correct that I have the same
4 movant on both motions but different objectors on it?

5 MR. SMOLINSKY: That's correct, Your Honor.

6 THE COURT: Okay. Come on up, please. I want to get
7 appearances by everybody and then I have some preliminary
8 comments to all of you folks.

9 MR. ZAJAC: Good morning, Your Honor. My name is Eric
10 Zajac, Z-A-J-A-C, and I represent the movant in both of these
11 cases.

12 THE COURT: Right. And for the objectors?

13 MS. CAMPBELL: Your Honor, my name is Nancy Campbell,
14 C-A-M-P-B-E-L-L, for Pompey Dodge.

15 THE COURT: Okay.

16 MR. KAWALEC: Good morning, Your Honor. My name is
17 Walter Kawalec, K-A-W-A-L-E-C, on behalf of M&M Motors.

18 THE COURT: M&M, right?

19 MR. KAWALEC: M&M, correct.

20 THE COURT: Right. Okay. Folks, I'll hear Mr. Zajac
21 for the movants briefly, but I really need help from the two
22 objectors. Whether or not relief from the stay is really
23 required is a matter of debate. Normally, when a debtor isn't
24 sued and a litigant, like Mr. Zajac on behalf of his two
25 plaintiffs, wants to go forward against a nonparty, the

1 bankruptcy judges look to the debtor to see -- guys, is this
2 interfering with your reorganization in any way? Is this
3 creating a contingent liability for the potential
4 indemnification obligation that's going to gore the ox of your
5 remaining creditor community in a material way? And if the
6 debtor doesn't step up to the plate at that point and ask us
7 judges to act, we judges say fine, go against the nondebtors.
8 Now, it looks, subject to your rights to be heard, that Mr.
9 Zajac's clients got caught in a buzz saw with the state courts
10 because the state courts didn't want to step on my toes, for
11 which I'm grateful. But my tentative, subject to your rights
12 to be heard, since the debtors aren't asking me for a third
13 party stay, a third party injunction, is to tell the state
14 courts it's okay. And if you guys haven't filed proofs of
15 claim for any indemnification rights you might have against the
16 estate even though the bar date might have already gone, my
17 reaction will say okay, I'll give you fifteen or thirty days to
18 file a protective proof of claim or something like that if you
19 haven't already done it. But I feel that the desire of the
20 stay courts to avoid stepping on my toes is resulting in an
21 injustice to the litigants who want to go against nondebtors.

22 And help me if my understanding as to either the law
23 or the facts are incorrect because I don't want the federal
24 courts to be giving rise to an injustice here. And I don't
25 think the state courts are playing Three-Card Monte with the

1 plaintiffs. But I don't want anybody playing Three-Card Monte
2 with the plaintiffs. And they have claims against a nondebtor.
3 I don't know whether or not they're insured. If they are
4 insured, that would be a matter of even greater concern to me.
5 I know that GM itself has got a huge self-retained exposure.
6 But GM isn't being sued now because the plaintiffs seem to be
7 willing to sever. So my tentative is to tell the two state
8 courts -- or actually, maybe it's Pennsylvania for both of them
9 and New Jersey for one, thanks, guys, for looking out for me
10 but it's okay.

11 Now, Mr. Zajac, help me first and then I'll hear from
12 Ms. Campbell and Mr. Kawalec.

13 MR. ZAJAC: Thank you, Your Honor.

14 THE COURT: You folks can sit down until it's your
15 chance to be heard and to argue.

16 MR. ZAJAC: And, Your Honor, just to provide you with
17 a little bit of further context because you obviously have read
18 the papers, Pennsylvania is one of those states where an
19 intermediate seller or distributor of the vehicle is as
20 responsible as the manufacturer for design defect. To sort of
21 cut to the chase here, I think what's happening is --

22 THE COURT: Well, pause, Mr. Zajac, because I thought
23 there was a dispute between you and your opponents on that.
24 But by the same token, I didn't see that it was necessary for
25 me to decide that issue.

1 MR. ZAJAC: No. It isn't necessary for the Court to
2 decide that issue. But to follow up on your comment about
3 whether the nondebtors are insured, the dealership/nondebtors
4 who are objecting to the relief that we're requesting are
5 insured and they're very well insured. They appear to be
6 sufficiently insured to cover the claim. So, in all due
7 respect to my colleagues here behind me, these objections
8 really are about concern for holding the bag for design
9 defects.

10 THE COURT: Well, you can't blame them for not wanting
11 to hold the bag because the carriers who they may ultimately be
12 acting for could, if you win your lawsuit -- I don't know
13 whether you deserve to win it or not. But if you win it, they
14 could write out a check to you and then their reimbursement is
15 going to come in little baby bankruptcy dollars. And if they
16 can't get their act together quickly enough, their claim could
17 be disallowed because contingent claims have to be liquidated
18 within a reasonable time under the Bankruptcy Code.

19 MR. ZAJAC: Nobody blames them for that. The carriers
20 are in the position that they do not envy in these cases,
21 obviously, the carriers for the dealerships. But the bigger
22 point is, while we don't blame them for their position, is
23 their position legally sound in terms of trying to lift the
24 stay so that I can proceed against those claims. I think the
25 law in this area is very clear that the stay should not be

1 preventing my client from pursuing her claims against these
2 nondebtor defendants, the dealerships, under the applicable
3 legal principles in state law. In fact, this Court itself
4 recognized in a footnote, in a published decision, 407
5 Bankruptcy Reporter 463, that folks like my clients may need to
6 resort to the dealers to be made whole in their personal injury
7 claims. Three-Card Monte

8 THE COURT: I remember when I said that, yes.

9 MR. ZAJAC: And that's why I'm here. That's why my
10 clients have asked me to file these motions so that we can get
11 these comfort orders given to the Pennsylvania state courts so
12 they understand it's okay. My clients should be able to
13 proceed against these other -- these nondebtor defendants.

14 Other than that, I'm going to rest on my papers.

15 THE COURT: I'll let you reply --

16 MR. ZAJAC: Okay.

17 THE COURT: -- but I want to give Ms. Campbell and Mr.
18 Kawalec a chance to be heard. Ms. Campbell, come on up,
19 please.

20 MS. CAMPBELL: Good morning, Your Honor.

21 THE COURT: Good morning.

22 MS. CAMPBELL: I will be very brief. One of the cases
23 that the plaintiff has quoted is Chao v. Hospital Staffing
24 Services, Inc., which is 270 F.3d 376, which is a Sixth Circuit
25 case from 2001, which is an action that discussed the

1 jurisdiction between the bankruptcy court and any other court.
2 And in that decision, the Court said, "Assuming its
3 jurisdiction is otherwise sound, the nonbankruptcy court may
4 enter orders not inconsistent with the terms of the stay and
5 orders entered by the bankruptcy court respecting that stay."
6 And that was a quote from page 384.

7 In this particular case, there's concurrent
8 jurisdiction. Everybody concedes to that point. In this
9 particular case --

10 THE COURT: Concurrent jurisdiction to do what?

11 MS. CAMPBELL: There's concurrent jurisdiction over
12 the debtor, both in the state court and in this bankruptcy
13 court. The plaintiffs made the decision to go to the state
14 court first, not to come here to the bankruptcy court but to go
15 to the state court and file a motion to sever the debtor, GM,
16 from the state court action. That state court made a decision.
17 That decision was to deny that motion at that particular time.
18 My issue here is that they're trying to do an end around --

19 THE COURT: Did it do so in a reasoned decision under
20 which it went through the Sonnax factors and/or determine the
21 extent to which A.H. Robbins v. Piccinin, or otherwise
22 applicable authority, might or might not create constraints
23 upon the state court? Because I would agree that under Rooker-
24 Feldman I can't sit as a court of appeals of a state court.
25 But I got to make sure that it actually ruled on this issue

1 because otherwise, a plaintiff is going to be denied his or her
2 day in court without a reasoned decision from anybody. And I'm
3 not going to be a party to that.

4 MS. CAMPBELL: Your Honor, the lower court issued an
5 order. And the plaintiff then did not --

6 THE COURT: An order. Did it issue an opinion?

7 MS. CAMPBELL: No. And that's my position is that the
8 plaintiff here needs to go back to that lower court and
9 determine the basis for that order before the Court -- before
10 they come up to here. My position is they've already gone to
11 one of the courts with concurrent jurisdiction. They have an
12 order. They need to go back to that court to get that
13 decision, to get that opinion, before they come here, because
14 they're trying to do an end-around. They're trying to make you
15 into an appellate court.

16 THE COURT: Well, pause, please, Ms. Campbell. Do you
17 understand why I used the expression before "Three-Card Monte"?

18 MS. CAMPBELL: To be honest, Your Honor, no.

19 THE COURT: I'm sorry?

20 MS. CAMPBELL: To be honest --

21 THE COURT: Three-Card Monte is a game that's played
22 on the streets of New York where less than fully reputable
23 people are moving a little -- I've never looked underneath
24 those things to see exactly what's there. I suspect it's a
25 ball or a marble or a token or something like that. And the

1 poor sucker who's playing the game loses because things are
2 moving on him too fast and it's like a moving target. And
3 what -- you have somebody who's been injured here. And the
4 person originally had claims against both GM that made the
5 vehicle and the dealer who sold the vehicle to the injured
6 party or the injured party's friend or roommate or whatever the
7 facts are in this case. And we have a scenario under which a
8 plaintiff is losing -- in one case, it's a her. I forgot the
9 gender of the other plaintiff -- a day in court because
10 everybody is saying well, you got to go down to the next door,
11 you've got to do this, you've got to do that, all because of
12 the bankruptcy stay and I am the gatekeeper of the bankruptcy
13 stay. And there are times when I have to make hard decisions
14 but I have difficulty seeing why this is a hard decision for me
15 to say the bankruptcy court is not going to stand in the way of
16 this lawsuit.

17 Now, if the stay court had issued a written opinion
18 under which it had said I have analyzed all of the federal
19 cases and I have concluded that the automatic stay is a barrier
20 to this severance motion then I'd have to give that serious
21 consideration. But it's not my understanding based upon my
22 review of the papers that the stay court did that. It issued
23 an order without explanation denying a motion for a severance
24 which had the consequence of keeping this litigant away from
25 her day in court. Do you see why as a judge that offends me,

1 Ms. Campbell?

2 MS. CAMPBELL: Your Honor, in terms of the facts of
3 this case, I just want to briefly give you just a little bit of
4 the information about this case. I represent Pompey Dodge,
5 which is obviously a Chrysler company. And we sold a used car
6 but we didn't sell it to the person who was driving at the time
7 of Ms. Gilvary's accident. We were two sellers back from that.
8 We happen to be identified as the seller. This vehicle was
9 sold six times during the history of the vehicle up and to the
10 day of the accident. We just happened to be one of those
11 sellers who happens to be a Chrysler dealership who sold a GM
12 vehicle so that there is no direct contact between my client
13 and the facts of this accident except that somewhere along the
14 line, we happened to sell a used car that now we're going to
15 have to defend against. That's number one.

16 Number two, I just go back to my point -- is we don't
17 know the basis of the judge's order. And I think we should
18 have that opportunity and that should be presented to you. And
19 it's a simple motion for Mr. Zajac to go back to the lower
20 court and say can you give us an opinion. If at that point,
21 the Court says no then we're back in front of you. But if the
22 Court says yes, then you have the information that you need to
23 review before you make your decision. I'd have to have you
24 come in as the appellate court on the lower court decision when
25 that lower court decision may be based on everything that you

1 think it should be. We don't know that yet. And I'm simply
2 asking for one process in between to go back and request that
3 of the lower court before Your Honor makes that decision.
4 That's all I'm asking.

5 THE COURT: Okay. Thank you, Ms. Campbell. All
6 right. Mr. Kawalec?

7 MR. KAWALEC: I think Ms. Campbell pretty much covered
8 the argument and I would join in in that argument. I would
9 also like to add --

10 THE COURT: Well, Mr. Kawalec, are your facts the same
11 as Ms. Campbell's or are they --

12 MR. KAWALEC: Strikingly so.

13 THE COURT: To what extent in your M&M Motors
14 situation was there an affirmative ruling by the Pennsylvania
15 state court determining issues before me?

16 MR. KAWALEC: The Pennsylvania's -- everything that I
17 know at this point -- all I know at this point is that they
18 issued an order. I checked the dockets this morning. It was
19 dated the 26th. There's some indication on the docket that it
20 was actually sent out yesterday. So I --

21 THE COURT: Yesterday?

22 MR. KAWALEC: I'm sorry? Yesterday, the 1st.

23 THE COURT: You mean, after the briefs were filed in
24 this matter --

25 MR. KAWALEC: Yes.

1 THE COURT: -- before me?

2 MR. KAWALEC: Yes. That's correct.

3 THE COURT: And this is by the appellate court or by
4 the lower court, court of common pleas or whatever you call it
5 in Pennsylvania?

6 MR. KAWALEC: The appellate court, the Superior Court,
7 which is the first level court. I don't know whether it was
8 accompanied by an order -- by an opinion. I do know that in
9 our motion, we presented a number of different options --

10 THE COURT: Well, the problem I have, Mr. Kawalec, or
11 at least the question I have is that if the automatic stay
12 doesn't apply then the Pennsylvania courts have no business
13 preventing Mr. Zajac from going against your client. But if
14 the automatic stay does apply then any order that they issued
15 at this point would seemingly be void as violative of Section
16 362 of the Code. Am I missing something?

17 MR. KAWALEC: I think so. And here is -- one of my
18 objections here was essentially that Mr. Zajac is asking for
19 Your Honor to lift the stay. Where has that stay been entered
20 as to my client? My client, as a nondebtor, isn't covered by
21 the automatic stay. We would have to ask for it. Now we've
22 asked for Your Honor to do the analysis in this court and
23 extend it to my client. We did the same thing in the
24 Pennsylvania court. But in the Pennsylvania court, there's
25 also case law in Pennsylvania that establishes that severing

1 the case is at that court's discretion. And one of the reasons
2 why it would be a situation like this where you have the right
3 to indemnification and so forth -- but also if there are
4 problems with, say, for example, discovery which would overrule
5 and prejudice my client, the Court is then empowered under
6 Pennsylvania law to deny the severance until that situation is
7 resolved. And we argued before the appellate court in
8 Pennsylvania that it should not grant the severance for those
9 reasons because it would be unduly prejudicial and --

10 THE COURT: But -- pause, please, Mr. Kawalec.

11 MR. KAWALEC: Sure.

12 THE COURT: The federal law is pretty clear, isn't it,
13 that while the automatic stay protects debtors from lawsuits
14 against them plus certain other things, one of the things that
15 it doesn't protect them against is compliance with discovery
16 obligations although I suppose the bankruptcy court has the
17 ability to protect them if any particular discover obligation
18 is unduly burdensome. But I think the law is pretty clear that
19 362 is not a Get Out of Jail Free card for debtors in terms of
20 compliance with discovery obligations.

21 MR. KAWALEC: Correct.

22 THE COURT: Am I correct?

23 MR. KAWALEC: Correct. And it is in the possibility
24 that there may be difficulties, as Your Honor has detailed,
25 especially in light of the fact that, because of the way

1 Pennsylvania law is, if the plaintiff is able to establish the
2 fact of the defective product as against M&M Motors, okay, then
3 that finding should apply to General Motors as well. So they
4 might be in a situation where because of that fact --

5 THE COURT: Well, it may or may not be binding against
6 General Motors when General Motors wasn't in the courtroom in
7 Pennsylvania.

8 MR. KAWALEC: Well, that would be one of the
9 questions. But the other question is would that then provide
10 the absolute indemnification that Pennsylvania law -- that's
11 established by Pennsylvania law. And we would argue that it
12 absolutely does. So at that point, then you would have
13 essentially a finding against GM by virtue of the finding
14 against M&M Motors which is the basis of our argument why 362
15 should apply to us. And we made that argument both here and in
16 Pennsylvania appellate courts that, because of that, it's
17 essentially the Queen case here and -- I forget the name of the
18 other case, the A.H. --

19 THE COURT: A.H. Robbins v. Piccinin, I think it's
20 called.

21 MR. KAWALEC: That this situation that we have here
22 because of the peculiarities of Pennsylvania law that it would
23 establish that as a matter of law.

24 THE COURT: Okay.

25 MR. KAWALEC: If I could, Your Honor, you also

1 mentioned --

2 THE COURT: Of course.

3 MR. KAWALEC: -- the fifteen and thirty-day protective
4 proof of claim if, in fact, Your Honor decides to grant
5 plaintiff's motion.

6 THE COURT: Have you already filed a proof of claim on
7 behalf of your client?

8 MR. KAWALEC: I didn't, no. That's why I would like
9 to ask for that possibility.

10 THE COURT: Stand where you are. Ms. Campbell, did
11 you on behalf of your client?

12 MS. CAMPBELL: No, Your Honor, so I would request
13 that.

14 THE COURT: Mr. Smolinsky, has the bar date come and
15 gone in June?

16 MR. SMOLINSKY: Yes, Your Honor. The bar date was
17 November 30th, 2009.

18 THE COURT: Does the debtor have a position as to
19 whether it would object if I were to give these folks fifteen
20 or thirty days to file protective proofs of claim?

21 MR. SMOLINSKY: Your Honor, subject to, of course, our
22 reservation of rights to review the claim and take a position
23 as to substance, we won't stand in your way if you think it's
24 appropriate.

25 THE COURT: Thank you. Okay. Anything else, Mr.

1 Kawalec?

2 MR. KAWALEC: No. That's all, Your Honor.

3 THE COURT: Okay.

4 MR. KAWALEC: Thank you, Your Honor.

5 THE COURT: Mr. Zajac, would you like to reply?

6 MR. ZAJAC: Thank you, Your Honor. I just want to try
7 to make sure that with respect to the Soffer motion, we're
8 grounded in talking about the same order that led us here. The
9 order that led us here was from June of 2009 issued from the
10 Pennsylvania Superior Court.

11 THE COURT: Which is the Pennsylvania intermediate
12 appellate court?

13 MR. ZAJAC: Correct. The case had been on appeal on a
14 venue issue when the bankruptcy was filed. If you'd like, I
15 could hand up the order but it specifically basically says --

16 THE COURT: Would you, please?

17 MR. ZAJAC: Yes. I --

18 (Pause)

19 MR. ZAJAC: May I approach, Your Honor?

20 THE COURT: Yes. Give me a moment, please. Okay.
21 This is the one that had been made reference to in one or all
22 of the briefs involving M&M, as best I remember of what I read
23 in those briefs. But what -- it doesn't seem to speak to a
24 severance in any way.

25 MR. ZAJAC: No. My motion for severance was filed

1 months ago and perhaps -- I'm sorry if I --

2 MR. KAWALEC: Kawalec.

3 MR. ZAJAC: Kawalec. Perhaps Mr. Kawalec was
4 referring to some order that has just been released but not
5 received by anybody on that particular motion. The order that
6 you see there was just entered sua sponte by the Court as soon
7 as the suggestion of bankruptcy was filed. So --

8 THE COURT: Would you stand in place for a second,
9 please, Mr. Zajac, because this is the order that I was talking
10 about when I was talking about the Pennsylvania courts trying
11 not to step on my toes. But if I heard you right, Mr. Kawalec,
12 you were saying that an order had been received by the
13 intermediate Pennsylvania appellate court in the last day or
14 two not back in '09 and that it dealt with severance. Did I
15 hear you right?

16 MR. KAWALEC: That is correct, Your Honor. There was
17 a motion filed by Mr. Zajac a few months ago. And as I said, I
18 checked the website for the court at their dockets online and
19 there was an indication that the order was entered. It was
20 dated the 26th and sent to the lower court judge on the 1st.
21 So it indicated to me that it may have actually been put online
22 on the 1st.

23 THE COURT: The 1st of March?

24 MR. KAWALEC: The 1st of March, correct.

25 THE COURT: Being yesterday?

1 MR. KAWALEC: I'm sorry.

2 THE COURT: Being yesterday.

3 MR. KAWALEC: Yesterday, denying the order. I
4 actually did that -- again, I'm ninety-nine percent sure I did
5 it this morning but, frankly, I could have done it last night.
6 I stayed over and I've been doing work on this case since last
7 night. But they indicated that they denied the order --

8 THE COURT: Okay.

9 MR. KAWALEC: They denied the motion for severance.

10 THE COURT: Thank you. Mr. Zajac, you want to
11 continue, please? It sounds to me, however, like you and Mr.
12 Kawalec were talking about two separate orders.

13 MR. ZAJAC: Yes. I appreciate that we've been able to
14 clarify exactly what we're talking about here. And assuming
15 that the Superior Court did deny my motion, it puts us in the
16 same plight. It doesn't really change the dynamic of why we're
17 here.

18 THE COURT: That being your severance motion?

19 MR. ZAJAC: Correct.

20 THE COURT: But it does, at least seemingly, put M&M
21 in the same category as Ms. Campbell's dealership, Pompey, I
22 think it's called.

23 MR. ZAJAC: Yes.

24 THE COURT: Okay.

25 MR. ZAJAC: Same -- they're on the same position and

1 we're seeking the same relief.

2 Let me just address finally this proposal that's been
3 made that the Gilvary case be sent back to the trial judge
4 again. Your Honor, you spoke about injustices. We were about
5 two and a half weeks away from our trial date in June of 2009
6 on this case involving a nineteen year old girl who is
7 paralyzed from the neck down and who has, since the accident,
8 who's been a ward of the state living on welfare. And here we
9 are at a hearing nine months later trying to get this case back
10 on track dealing with a trial court judge's one sentence order
11 that doesn't explain why he wouldn't sever the motion and a
12 request that we send it back to that judge. And then depending
13 on what that judge does, we may come back here again.

14 It is not too cynical for me to point out that when I
15 filed my motion to sever, Ms. Campbell opposed it attaching an
16 order from another Philadelphia trial judge who specifically
17 wrote in his order denying the severance, "The motion is
18 properly addressed to the bankruptcy court." Okay? So her
19 position, when I filed my motion for severance was that this is
20 a matter for the bankruptcy court. And here we are in the
21 bankruptcy court and she's saying it's a matter for the state
22 court. Thank you, Judge.

23 THE COURT: Okay. I want you guys to sit in place. I
24 may need to take a recess for a few minutes but at this point I
25 want you to sit in place.

1 (Pause)

2 THE COURT: Ladies and gentlemen, I'm going to grant
3 Mr. Zajac's motion for relief from the stay to the extent an
4 order from me is appropriate. And incident to my authority to
5 do so, I'm going to articulate at some length the underlying
6 federal rationale under which I'm doing what I'm doing. But I
7 am going to refrain, at least today, from ruling on matters
8 that might be appropriately or more appropriately regarded as
9 matters of state law and for the Pennsylvania courts to decide
10 without prejudice to parties' rights to come back to me if the
11 matters that are on my watch aren't satisfactorily resolved.
12 And I'll flesh that out in greater detail.

13 As all parties recognize, the two lawsuits are not
14 going forward against GM. Or the proposal is that to the
15 extent they were once brought against GM, they're not going to
16 be brought against GM now. The law is clear that the automatic
17 stay that is put forward under Section 362 of the Bankruptcy
18 Code doesn't apply to suits against co-defendants. The Courts
19 may, on motion, extend the stay in unusual circumstances such
20 as where a lawsuit against a third party impairs the debtor's
21 ability to reorganize or the suit is effectively against the
22 debtor.

23 Under those circumstances, however, the normal way by
24 which we Courts do that is to permit the debtor to come into
25 the court to say, Judge, we need the extra protection and then

1 we judges grant that result or that relief upon an appropriate
2 showing of cause. Here, all agree, I think, as to the
3 seriousness of the stakes, both to the plaintiffs in these
4 suits and for that matter, for the dealerships that have to
5 defend them even if they're defending them with insurance. But
6 the lawsuit doesn't affect the debtor's ability to reorganize
7 and it may or may not result in a claim against GM, a matter
8 that I don't need to decide today and don't decide today.
9 Plainly, that's a matter that's not properly before me now.

10 But I think the better view is that parties need to
11 affirmatively ask the bankruptcy court to extend the stay when
12 the lawsuit is brought against a co-defendant. But while
13 that's so, to the extent the stay automatically applies, I'm
14 granting relief from the stay. I am conditioning that despite
15 the fact that I think that Mr. Smolinsky was biting his tongue
16 when he said he didn't object. I am granting each of the two
17 dealerships fifteen business days to file protective proofs of
18 claim for indemnification without prejudice to the rights of
19 the estate -- and by "estate", I mean the debtors or their
20 creditors' committee -- to object to those claims for any
21 lawful ground whether because the showing for indemnity hasn't
22 been satisfactorily made or because the claim remains
23 contingent and can't be liquidated in a satisfactory period of
24 time.

25 But as a matter of bankruptcy law, the way this plays

1 out is the bankruptcy court doesn't stand in the way of a
2 lawsuit against third parties. And the third parties, if they
3 think they have indemnification rights, either by contract or
4 by state law, can file claims against the estate to get their
5 share of the estate's assets and the estate has the ability to
6 object to them. That's the drill, folks.

7 Now, here we have a situation where the Pennsylvania
8 courts, for sure, and possibly the New Jersey courts as well,
9 have tried to accommodate bankruptcy concerns by entering this
10 order dated June 22, 2009 which is a very typical way of an
11 appellate court to avoid stepping on the toes of a bankruptcy
12 court. And we have two -- one described in the papers and,
13 apparently, one that Mr. Kawalec has just described to me,
14 unexplained orders of Pennsylvania courts denying the motion to
15 sever. I don't know whether they did that because of the
16 desire, like the Pennsylvania Superior Court did, to deal with
17 the bankruptcy concerns. Unexplained orders are very difficult
18 for another judge to get their meaning. And while I would
19 think that under Rooker-Feldman, I cannot sit as a court of
20 appeals to reverse a decision of a state court if it was on a
21 stated ground, I can't tell from what's been done whether those
22 orders are void or not. I can't tell whether they were based
23 upon federal law or not. And, frankly, I don't know why they
24 were entered into although the most likely explanation is that
25 those courts didn't want to step on my toes. Now I'm telling

1 those courts that they're not stepping on my toes by letting
2 the litigation proceed against the dealership even though the
3 lawsuit can't proceed against GM.

4 I am today both authorized to and it is my duty to
5 send a clear message to the Pennsylvania and New Jersey courts
6 that I'm giving them whatever comfort they need to know that
7 they wouldn't be stepping on my toes or by acting contrary to
8 federal law if they allowed the lawsuits to proceed against the
9 dealerships now that the plaintiff has said -- plaintiffs have
10 said that they won't go against GM. From a perspective of
11 federal law, proceeding against the dealerships and severing
12 out GM is perfect okay. In fact, it's what we bankruptcy
13 judges normally expect. But I am not today, without prejudice
14 to whether I ever could or not, ruling on what is essentially a
15 state court question as to whether a severance is proper under
16 state law. I'm giving everybody a reservation of rights to
17 come back to me. It's my suspicion that once the Pennsylvania
18 courts know that it's perfectly okay to sever against the
19 dealerships that they'll allow the plaintiffs to have their day
20 in court against the dealerships with the understanding that
21 the dealerships then have the ability to seek indemnification
22 against GM.

23 Mr. Zajac is quite correct that this was one of the
24 premises upon which I issued the original ruling that Mr. Zajac
25 cited back on the 4th of July weekend of last year when I

1 agreed with GM on the issues -- and new GM even more so than
2 Old GM -- on the matters of success or liability. I issued
3 that ruling with the expressly stated understanding that
4 plaintiffs, like those that Mr. Zajac represents, would be
5 allowed to go against the dealerships. I'm assuming without
6 deciding that they have rights under Pennsylvania law against
7 the dealers. But if they don't, that's a matter that the
8 Pennsylvania courts are perfectly free to decide.

9 But the important thing that I'm saying, folks, is the
10 fact that while GM could have once been sued as a defendant,
11 and while the dealers might well have rights of indemnification
12 against GM, to the extent the automatic stay prevented the
13 Pennsylvania courts from hearing that litigation, the automatic
14 stay is no longer a problem. And I'm granting relief from the
15 stay so the Pennsylvania courts can allow the lawsuits to
16 proceed against the dealerships. Federal law is not an
17 impediment to their hearing those claims.

18 Mr. Zajac, you are to settle an order at your earliest
19 reasonable convenience consistent with this ruling stating in
20 substance that for the reasons set forth on the record, your
21 motion is granted and that to the extent the automatic stay
22 imposed by federal law was an impediment to your proceeding
23 against the dealers, it no longer is. And you are to further
24 state that to the extent that any party wishes further relief
25 or clarification from the bankruptcy court with respect to any

1 matter of federal law, this Court, the bankruptcy court,
2 retains jurisdiction to hear any such matter without prejudice
3 of the rights to any of the parties to take or oppose any
4 position in further proceedings in this court.

5 Not by way of re-argument, are there any open issues?
6 Oh, forgive me. Mr. Zajac, you're also to say in baby talk
7 that the dealers have -- I think I said fifteen business days
8 to file protective proofs of claim for indemnification if they
9 elect to do so.

10 Come on up, please, Mr. Zajac.

11 MR. ZAJAC: Thank you, Your Honor. I'll be happy to
12 submit a proposed order.

13 THE COURT: Settle it as we use that expression in New
14 York federal law. That means you submit the proposed order,
15 you give your opponents no less than two business days' notice
16 if you serve by hand, fax or e-mail. And add whatever the
17 local court rules say if you decide to use snail mail. And
18 although you, as a practical matter, have two opponents, you
19 also have to serve it on the debtor and on the U.S. attorney's
20 office representing the federal government and New GM so that
21 they have the opportunity to weigh in on it even though they're
22 not really your opponents on this matter.

23 Mr. Smolinsky? Don't necessarily go, Mr. Zajac. I
24 just want to give Mr. Smolinsky a chance to be heard now.

25 MR. SMOLINSKY: Your Honor, I stand for a

1 clarification. I fully support Your Honor doing what you think
2 is the right thing with respect to the extension of the bar
3 date to allow these two dealers to file claims. As Your Honor
4 knows, there are thousands of similar product liability and
5 personal injury cases and there will be cases going forward
6 against dealers. So that I understand going forward how we're
7 supposed to deal with dealers who have not filed claims by the
8 bar date, I'm not a hundred percent sure what the rationale is
9 for allowing a dealer who knew that they had contribution
10 claims or indemnity claims and didn't file claims. I need --
11 but I'd like --

12 THE COURT: Well, the rationale for that, Mr.
13 Smolinsky, was pretty much limited to these two dealers because
14 it's my understanding -- and if this is incorrect, please tell
15 me. But hasn't this motion been kicked a number of times?

16 MR. SMOLINSKY: Yes, Your Honor. That's the
17 clarification that I was essentially looking for. I just want
18 to make sure the --

19 THE COURT: It's for these two guys. It's not for the
20 whole world.

21 MR. SMOLINSKY: Thank you, Your Honor.

22 THE COURT: Okay. Mr. Zajac?

23 MR. ZAJAC: I think I understand what my task is to
24 settle this order and the associated housekeeping issues and I
25 will proceed accordingly.

1 THE COURT: Very good.

2 MR. ZAJAC: Thank you.

3 THE COURT: Okay. Thank you very much, folks. Have a
4 good day.

5 MS. CAMPBELL: Thank you, Your Honor.

6 MR. ZAJAC: Thank you, Your Honor.

7 MR. SMOLINSKY: Your Honor, we still have matters --

8 THE COURT: Forgive me. Okay. Anybody who was here
9 on the two dealership issues is free to go. And, Mr.
10 Smolinsky, I apologize to you. We'll take care of your other
11 stuff although am I right that nothing else is opposed?

12 MR. SMOLINSKY: Your Honor, nothing else is opposed.
13 It should go fairly quickly but there's one matter that I'd
14 like Your Honor to perhaps focus a bit of time and that's the
15 objection to the Lafonza Earl Washington claim.

16 Your Honor, number 5 on the agenda is the status
17 conference on the motion of ACE American Insurance Company.
18 That relates to an assumption and assignment of certain
19 insurance policies to New GM and the impact that that would
20 have on continuing claims that Old GM would have under the
21 policy. We finally, after months of discussion, have an
22 agreement that's signed off by the creditors' committee as well
23 as the parties will be submitting that. And that will resolve
24 finally this ACE motion that's been carried from time to time
25 on the calendar. So we should have that to you certainly in

1 the next twenty or thirty days.

2 THE COURT: Sure. Okay.

3 MR. SMOLINSKY: Number 6, Your Honor, is the debtors'
4 objection to proofs of claim filed by Lafonza Washington.
5 Lafonza Washington has been a fixture in this case for some
6 time. He's filed various applications to the Court which Your
7 Honor has summarily dismissed. He's --

8 THE COURT: Are those the ones that I dismissed by
9 endorsed orders that pretty much said that after I read it I
10 couldn't understand what he was asking for and, basically, that
11 he had failed to state a prima facie claim for relief?

12 MR. SMOLINSKY: That's correct, Your Honor. He's also
13 served writs of attachment seeking to execute on his so-called
14 judgment of 1.6 billion dollars. And he certainly has spoken
15 to many, many lawyers in my firm, at times have been verbally
16 abusive to various staff members of my firm. And what we tried
17 to do in this objection is to provide you with the smattering
18 of some of the history of what we think makes Mr. Washington
19 believe to be a creditor in this case although we certainly
20 don't agree that there's any basis. We think it has something
21 to do with a class action settlement that was ordered by the
22 district court in Michigan on behalf of thousands of parties.
23 I think Mr. Washington believes that he's the judgment creditor
24 in that case. But we wanted to give you the ability to look
25 behind the proof of claim and see some of the other things that

1 he's filed in Michigan as well as in the Delphi case.

2 We don't think that things have gotten to the point of
3 me asking for a Martin-Trigona type of injunction.

4 THE COURT: I was about to ask you that. I mean, it
5 sounds to be very near the point if it's not over the point
6 where it's a classic example of Martin-Trigona type territory.

7 MR. SMOLINSKY: So, Your Honor, I don't know if you
8 need to hear anything else or if you want us to do anything
9 else with respect to his repeated violence. But we would ask
10 that these claims be expunged for lack of basis and foundation.

11 THE COURT: Okay. And is he in the courtroom today?

12 MR. SMOLINSKY: I don't see him, Your Honor. I don't
13 know if he's on the phone. I don't think he has a history of
14 necessarily appearing when his motions are heard.

15 THE COURT: Okay. I'm sustaining your objections to
16 the claim without prejudice to your additional right if you get
17 continued harassment to seek a Martin-Trigona order. I think
18 if you do seek one, and I can -- I thought of Martin-Trigona
19 before you had mentioned the words. I think you still have to
20 do that by a formal motion. But for now, your claims objection
21 is sustained. And if you think you want to go the next step,
22 you have my without prejudice order to allow you to do so.

23 MR. SMOLINSKY: Thank you, Your Honor. We'll submit
24 an order. Number 7 on the agenda is the debtors' objection to
25 a proof of claim. This is a class proof of claim filed by

1 Susan Angell. We filed responsive papers. In discussions with
2 the claimants, they've decided to withdraw those claims and to
3 simply seek their personal claims. So they will be, over the
4 next few days, withdrawing their claim and then we will file a
5 withdrawal of the motion.

6 THE COURT: Sure. That's okay.

7 MR. SMOLINSKY: The last matter for today is the
8 debtors' eleventh omnibus motion to reject certain executory
9 contracts. We did file one notice of withdrawal with respect
10 to the contracts with Electro-Motive Diesel. Other than that,
11 we've received no objections to the relief sought in that
12 motion.

13 THE COURT: Okay. So I'm granting it for the non-
14 objectors. And did you say you're kicking the one for Electro-
15 Motive Diesel?

16 MR. SMOLINSKY: No. We've withdrawn the motion with
17 respect to that claim.

18 THE COURT: Oh.

19 MR. SMOLINSKY: So the schedule attached to the order
20 excludes those contracts from the relief sought.

21 THE COURT: That's fine.

22 MR. SMOLINSKY: Other than that, everything else is
23 adjourned.

24 THE COURT: Okay. And I apologize for prematurely
25 adjourning the hearing. I think we're really done now?

1 MR. SMOLINSKY: Now we're really done.

2 THE COURT: Okay. Thank you.

3 MR. SMOLINSKY: Thank you, Your Honor.

4 THE COURT: We're adjourned.

5 (Whereupon these proceedings were concluded at 12:10 p.m.)

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I N D E X

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Pompey Dodge and M&M Motors dealerships granted fifteen business days to file protective proofs of claim for indemnification without prejudice to the rights of the estate	37	16
Debtors' objection to proofs of claim filed by Lafonza Earl Washington sustained	45	15
Debtors' eleventh omnibus motion to reject certain executory contracts granted	46	13

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C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a
true and accurate record of the proceedings.

LISA BAR-LEIB
AAERT Certified Electronic Transcriber (CET**D-486)

Veritext
200 Old Country Road
Suite 580
Mineola, NY 11501

Date: March 3, 2010